

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JACK D. IVEY)	
Claimant)	
VS.)	
)	Docket Nos. 177,500 and 177,501
GRAIN SORGHUM HOGS, INC.)	
Respondent)	
AND)	
)	
UNINSURED)	
Insurance Carrier)	

ORDER

ON the 15th day of March, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Thomas F. Richardson, dated January 25, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Mark E. McFarland of Garden City, Kansas. Respondent appeared by and through its attorney, Keen K. Brantley of Scott City, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board included the transcript of the Preliminary Hearing of June 22, 1993, and exhibits introduced at that hearing; the transcript of the deposition of Ms. Karen Terrill taken on December 6, 1993, and exhibits introduced at that deposition; and, all pleadings filed of record in this case.

ISSUES

The January 25, 1994, Order of Administrative Law Judge Thomas F. Richardson denies benefits on the basis of his ruling that the respondent is engaged in an agricultural pursuit and exempt from the Kansas Workers Compensation Act pursuant to K.S.A. 44-505(a)(1). Claimant appeals that ruling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board has jurisdiction pursuant to K.S.A. 44-551 and 44-534a to consider this appeal from a preliminary order. Respondent has asserted and the Administrative Law Judge has found the Workers Compensation Act does not apply because respondent was engaged in an agricultural pursuit. The Appeals Board considers this to be an appeal relating to a disputed issue of one of the "certain other defenses . . ." referred to in K.S.A. 44-534a.

Upon review, the Appeals Board agrees with the decision of the Administrative Law Judge and finds:

- (1) Respondent was engaged in agricultural pursuit; and,
- (2) The employee was, at the time of the injury, engaged in employment incident to that agricultural pursuit.

The evidence established that respondent's business was a hog farm. It was described as a farrow-to-finish operation which involved insemination, birthing, raising and feeding, and selling the hogs as finished animals. Respondent is a corporation which employs eleven workers. Over the last several years the hogs have been sold to Farmland Industries in Crete, Nebraska. Respondent did not feed hogs for others and did not raise the grain used to feed the hogs. The evidence indicates that the process was an automated one and included a complicated process of artificial insemination.

Claimant's first injury occurred after several hogs had died in a trailer and he injured his low back in the process of pulling them off the semi-trailer. He re-injured his back in

March 1993 when, because they were short-handed, he picked up two gilts that were down in the back, shoveled off a load of fat, and moved an auger.

Pursuant to K.S.A. 44-505(a)(1) agricultural pursuits and employment incidents thereto are exempt from coverage by the Kansas Workers Compensation Act. In Whitham v. Parris, 11 Kan. App. 2d 303, 720 P.2d 1125 (1986), the Kansas Court of Appeals adopted an analysis requiring examination of three factors to determine whether the exemption applies:

- (1) The general nature of the employer's business;
- (2) The traditional meaning of agriculture as the term is commonly understood; and,
- (3) Each business is to be judged on its own unique characteristics.

As indicated, the general nature of respondent's business is raising hogs. Raising and feeding of livestock as a part of food production is, in the opinion of the Appeals Board, within the traditional meaning of agricultural. See Whitham v. Parris, supra. Certainly, for other purposes noted in K.S.A. 47-1502, feeding of livestock is defined as an agricultural pursuit. Finally, judging this particular business on its own unique characteristics, the Appeals Board notes respondent's business is a large and sophisticated hog-raising operation. This fact may reflect tension between the exemption for agricultural pursuits enacted at an earlier time in our state's history and the evolving modern farm. Nevertheless, the Appeals Board does consider it appropriate to treat respondent's business as an agricultural pursuit. The Appeals Board agrees with the characterization made by respondent's witness indicating that it is a large farm, but it is a farm.

As indicated in Frost v. Builders Service, Inc., 13 Kan. App. 2d 5, 760 P.2d 43 (1988), once it is determined that the respondent is engaged in an agricultural pursuit, the second step is to determine whether the employee was engaged in employment incident to that agricultural pursuit. In this case, the answer to the first question effectively answers the second. Neither party contends that claimant was engaged in any activity other than the hog-raising activities at the time of his injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Thomas F. Richardson, dated January 25, 1994, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Mark E. McFarland, 124 Grant, Garden City, KS 67846
Keen K. Brantley, PO Box 605, Scott City, KS 67871
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director